



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 98

Docket No. USCG-2011-0088

RIN 1625-AB63

Bulk Packaging to Allow for Transfer of Hazardous Liquid
Cargoes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations concerning the transfer of hazardous materials to and from bulk packaging on vessels. The Coast Guard is expanding the list of bulk packaging approved for hazardous material transfers to include International Maritime Organization (IMO) Type 1 and Type 2 portable tanks, United Nations (UN) portable tanks, and Intermediate Bulk Containers (IBCs). The Coast Guard is also expanding the list of allowed hazardous materials to provide greater flexibility in the selection and use of packaging in the transportation of hazardous materials. This rule will eliminate the need to obtain special permits or Competent Authority Approvals to use IMO Type 1 or Type 2 portable tanks, UN portable tanks,

or IBCs.

DATES: This final rule is effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0088 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2011-0088 in the "Search" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Tiffany Duffy, Hazardous Materials Standards Division, telephone 202-372-1403, e-mail Tiffany.A.Duffy@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

- I. Abbreviations
- II. Regulatory History
- III. Background
- IV. Discussion of Comments and Changes
 - A. IBC Standards
 - B. Manifolds
 - C. General Comments
 - D. Clerical Edits
- V. Incorporation by Reference
- VI. Regulatory Analyses
 - A. Regulatory Planning and Review
 - B. Small Entities
 - C. Assistance for Small Entities
 - D. Collection of Information
 - E. Federalism
 - F. Unfunded Mandates Reform Act
 - G. Taking of Private Property
 - H. Civil Justice Reform
 - I. Protection of Children
 - J. Indian Tribal Governments
 - K. Energy Effects
 - L. Technical Standards
 - M. Environment

I. Abbreviations

| | |
|-----------|---|
| AAHMS | Associate Administrator for Hazardous Material Safety |
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| DOT | Department of Transportation |
| FR | <u>Federal Register</u> |
| IBC | Intermediate Bulk Container |
| IBC Code | International Bulk Chemical Code |
| IM | Intermodal |
| IMDG Code | International Maritime Dangerous Goods Code |
| IMO | International Maritime Organization |
| MAWP | Maximum allowable working pressure |
| MPT | Marine Portable Tank |
| NAICS | North American Industry Classification System |
| NEPA | National Environmental Policy Act of 1969 |
| NPRM | Notice of Proposed Rulemaking |

| | |
|--------|--|
| NTTAA | National Technology Transfer and Advancement Act |
| OMB | Office of Management and Budget |
| OSV | Offshore Supply Vessel |
| PHMSA | Pipeline and Hazardous Materials Safety Administration |
| SBA | Small Business Administration |
| U.S.C. | United States Code |
| UN | United Nations |

II. Regulatory History

On March 9, 2012, we published in the Federal Register (77 FR 14327) a notice of proposed rulemaking (NPRM) titled Bulk Packaging to Allow for Transfer of Hazardous Liquid Cargoes. We received five comment letters on the proposed rule, containing a total of 10 comments. No public meeting was requested and none was held.

III. Background

In this final rule, we are amending 46 CFR subparts 98.30 and 98.33, which contain regulations concerning the transfer of hazardous materials to and from bulk packaging on vessels. These packagings are primarily portable tanks used by offshore supply vessels (OSVs) to transport hazardous materials to and from offshore platforms involved in the exploration and production of oil and natural gas. (In this document "packaging" is a generic reference to portable tanks and IBCs.)

Several types of portable tanks exist and are used by the industry in various capacities. Intermodal (IM) 101

and 102 portable tanks are older types of portable tanks that have not been manufactured since before 2003.

However, pursuant to Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations in 49 CFR 173.32, existing IM 101 and 102 tanks may continue to be used as long as they comply with all required specifications and are inspected regularly (see 49 CFR 173.32(c)(2)).

Similarly, marine portable tanks (MPTs), which are tanks that meet the requirements of 46 CFR part 64 and were approved by the Coast Guard before September 30, 1992, are also permitted by PHMSA regulations (see 49 CFR 173.32(c)(3)).

International Maritime Organization (IMO) Type 1 and Type 2 portable tanks are newer portable tanks that comply with specifications in the International Maritime Dangerous Goods Code (IMDG Code), section 4.2.0.1, which became effective in 2003. IMO Type 1 tanks are fitted with pressure-relief devices with a maximum allowable working pressure (MAWP) of 1.75 bar and above, while IMO Type 2 tanks are fitted with pressure-relief devices with an MAWP between 1.0 and 1.75 bar. The IMDG Code also contains specifications for other types of tanks, which are not discussed in this rule.

A United Nations (UN) portable tank, as used in this regulation, is an intermodal tank having a capacity of greater than 450 liters (118.9 gallons) (see definition in 49 CFR 171.8). The term is defined in 46 CFR 98.30-3 to mean a tank that complies with the regulations in 49 CFR 178.274, "Specifications for UN Portable Tanks," and 178.275, "Specification for UN Portable Tanks intended for the transportation of liquid and solid hazardous materials." These regulations contain additional requirements for the construction of tanks that meet UN specifications. We note that this definition differs from the common use of the phrase "UN portable tanks," which can be used to refer to any portable tank that meets any specification in the IMDG Code.

Intermediate Bulk Containers (IBCs) are rigid or flexible portable packaging, other than a cylinder or portable tank, which are designed for mechanical handling (see definition in 49 CFR 171.8). Regulations for IBCs are prescribed in 49 CFR 178, subpart N, "IBC Performance-Oriented Standards." As IBCs are not generally designed for transportation of hazardous material, their use is limited more than portable tanks.

In order to be used for transportation of hazardous materials, portable tanks and IBCs must comply with both

Coast Guard regulations in Title 46 of the CFR and Department of Transportation (DOT) PHMSA regulations in Title 49. Currently, the regulations in Title 46 only contain provisions for three classes of portable tanks: MPTs, IM 101 and 102 portable tanks, and portable tanks authorized for hazardous liquid materials by the Associate Administrator for Hazardous Materials Safety (AAHMS). This has led to a situation where operators who wish to use newer types of portable tanks or IBCs must apply for a special permit from PHMSA. This rulemaking updates Title 46 to permit newer portable tanks and some IBCs to be used without special approval.

IV. Discussion of Comments and Changes

In response to the publication of the NPRM, the Coast Guard received five comment submissions from the public, with a total of 10 distinct comments. The comments can be broadly divided into these three categories: IBC standards, manifolds, and general comments on the rule.

A. IBC Standards

One set of commenters focused on perceived shortcomings in the design of IBCs as compared to UN portable tanks and IMO tanks, and how the standards for IBCs could be made more rigorous to improve their safety. In making these comments, commenters suggested a variety of

improvements that could be made to IBCs that would improve the level of safety when using these containers with hazardous liquid cargoes.

We believe that some of these comments may have resulted from an unclear paragraph in the NPRM. Under section IV of the NPRM, titled "Discussion of Proposed Rule," there was a brief subsection describing proposed changes to 46 CFR 98.30-6: "Vessels Carrying IBCs." That subsection read as follows:

"This section would be added to describe the types of IBCs the Coast Guard would allow for the carriage of certain hazardous materials on board a vessel, and to make clear the requirements the IBCs would have to meet to gain approval from the Coast Guard. *We would allow the use of an IBC only if the IBC is equivalent to, or greater in standards than, an authorized IMO Type 1 or IMO Type 2 portable tank, or a UN portable tank.* (77 FR 14327, at 14330)," (emphasis added)

The above excerpt provides a general description of the precepts of the regulatory text in section 98.30-6, and describes the minimum construction requirements that metal IBCs must meet in order to be approved by the Coast Guard to be used with certain hazardous liquid cargoes. The regulatory text contains specifications based on

recommendations from PHMSA and Coast Guard engineering staff governing shell thickness, relief valves, closures on fill openings, and venting requirements that we believe comprise minimum safety requirements necessary in a maritime environment. We believe that if an IBC meets those specifications, and is used in accordance with all other applicable regulations, it is safe to use in a capacity for which it is designed. In this final rule, we are finalizing the revisions proposed in the NPRM with only minor changes.

Many of the commenters on the proposed rule raised questions and offered suggestions relating to the bolded portion of the subsection quoted above. These comments are addressed below.

One comment asked how the Coast Guard would determine that an IBC was equivalent to, or greater in standards than, an authorized IMO Type 1 or 2 or a UN Portable tank, as stated in the NPRM. The commenter stated that there might be individuals who attempted to capitalize on "grey areas" of the regulations. This commenter also suggested that inspecting these IBCs could pose a burden on the Coast Guard in determining equivalence.

In response, we are clarifying in the final rule preamble what we mean by the statement that IBCs would be

allowed if they are equivalent to, or greater than, an IMO Type 1 or 2 tank, or a UN Portable tank. The statement should not be interpreted to mean that there is a subjective test relating to safety. Instead, as stated above, the Coast Guard has determined that certain IBCs can be safely used if they meet the standards set forth in 46 CFR 98.30-6, are used in a manner compliant with all other regulations, and are only used with cargoes for which they are rated. The statement in the NPRM referenced by the commenter does not create an alternative means of compliance that deviates from the published regulations.

One commenter stated that, as the intent of this rule is to authorize IBCs for hazardous liquid cargo transfers only if the IBC is equivalent to, or greater in standards than, an authorized IMO or UN Portable Tank, MAWP of the authorized IBC should be similar to IMO or UN Portable Tanks.

We are not planning to make any specific changes to the regulatory text in response to this comment. Fundamentally, IBCs are not equivalent in design and construction to either IMO or UN Portable Tanks, and we did not intend to use this rulemaking action to revamp IBC standards. While our intent in this rulemaking is to ensure that the operation and use of IBCs is at a level of

safety similar to the use of IMO and UN Portable Tanks, the types of containers have different design and construction requirements and are used in different ways. With regard to IBCs, existing transport regulations (e.g., those in 49 CFR part 173) prohibit the use of IBCs not capable of operating under the pressure specified for the intended cargo or application. We do not believe that it is necessary to require that IBCs meet the (varying) MAWP requirements of any of the portable tanks.

The commenter also stated that in order to achieve a similar level of safety, the IBC piping as required in proposed § 98.30-13(a)(3) should be to the higher standard of IMO Type 1 and Type 2 tanks and UN Portable tanks. The commenter stated that this would include the requirement of an internal valve with a shear section and a means of remote closure. Again, we note that we are not requiring IBCs to meet all the design specifications of IMO tanks and UN Portable tanks. We believe that IBCs can be used safely in the limited uses for which they are designed if they meet the applicable requirements and are used in accordance with regulatory and design standards, such as those in 49 CFR 173.35 (Hazardous Materials in IBCs). We do not believe it is prudent to redefine IBCs in such a way as to perform as substitutes for UN portable tanks.

One commenter stated that if the intent of the proposed rule is to create safer packages in relative volumes, IBCs lack safety features in the discharge piping area that exist in the IMO and UN-portable type containers. While we agree that IBCs lack the safety features contained in some portable tanks, we believe that they can be used safely if the IBCs meet the requirements set forth in § 98.30-6, and are used in accordance with regulatory standards in Titles 46 and 49 of the CFR, as well as the manufacturers' design standards. Again, we note that the use of IBCs is more limited than that of IMO and UN portable tanks.

One commenter stated that if IBCs are authorized, there should be some specific verbiage regarding specialized lifting points, although the commenter did not suggest any specific language. In response, we note that there are current regulations in 49 CFR 178.704 that address the matter of lifting points for IBCs. Specifically, this section requires that "[a]ny lifting or securing features of an IBC must be of sufficient strength to withstand the normal conditions of handling and transportation without gross distortion or failure and must be positioned so as to cause no undue stress in any part of the IBC." (49 CFR 178.704(c)) However, in order to enhance

the clarity of our regulations, we have added text to § 98.30-9 that draws attention to the current requirements for lifting points in regards to IBCs.

B. Manifolds

A manifold is a chamber or system of pipes having several outlets in which a liquid or gas can be gathered or from which a liquid or gas can be distributed to packagings connected to each outlet. Manifolds are used to transfer hazardous and non-hazardous liquids and gases in both maritime and land-based applications. The advantage of a manifold is that it enables the simultaneous filling of multiple packagings, although the use of a manifold can increase the danger of inadvertent discharges without additional safety equipment. Using a manifold for a transfer involves attaching a pump to the storage tank, connecting the manifold to the pump, connecting two or more packagings to the manifold, monitoring the transfer, and breaking down the setup. This rulemaking only addresses manifolds used in the transfer of hazardous materials to or from a vessel.

An alternative to the manifold-multiple IBC for transferring hazardous material to or from a vessel is the sequential fill method. This method consists of multiple iterations of connecting a packaging to the pump,

connecting the pump to the storage tank, monitoring the transfer, and breaking down the connections.

Currently, there are no regulations that address the use of manifolds in conjunction with packaging for the transfer of hazardous materials to or from vessels, and thus they are used in some operations. In proposed § 98.30-13(b) of the NPRM, the Coast Guard proposed to prohibit the use of manifolds when transferring a hazardous material to or from a packaging onboard a vessel. In the NPRM, we stated that, "[m]anifolds would be prohibited because the use of a manifold is a manual operation and the emergency shutoff during the transfer to and from a portable tank or IBC should be automatic. This would minimize the loss of hazardous materials in the event of an emergency, thereby reducing risk to health and environment." (77 FR 14330)

Two commenters made recommendations on the NPRM's proposed prohibition of manifolds. One commenter simply stated that the prohibition was a good idea and that the use of manifolds should not be allowed. On the other hand, one commenter recommended that this prohibition be removed in the final rule. The commenter argued that the use of a manifold eliminates the requirement to make or break

multiple tank connections, and that each connection is an opportunity for injury.

The commenter that recommended removing the prohibition noted that manifolds are currently in use by industry. Ending the use of manifolds for vessel transfers would have required their current users to shift to filling the packaging sequentially. This method requires more labor effort and, as noted by the commenter, presents additional possibilities for injuries.

Based on the arguments made in the comments, we have re-evaluated our position regarding the use of manifolds for vessel transfers of hazardous materials. We agree with the commenter's analysis that, in terms of reducing the need to make and break tank connections, the use of a manifold alleviates the potential for some injuries associated with those practices. It is also obviously less expensive to transfer material to multiple packages using a manifold rather than filling each package sequentially. However, we are concerned about the potential for loss of hazardous material during a transfer. The commenter proposing use of manifolds also suggested that the automatic shutdown of the transfer can be accomplished via the pump emergency shutdown control. We agree that this is sufficient protection for sequential transfer involving a

single packaging. However, a transfer using a manifold is a more complex operation with multiple packagings, hoses, and connections, and a shutdown of the pump alone may not stop a discharge of hazardous material.

Because a manifold has connection points with many packages, if a discharge of hazardous material is observed, it may be unclear where in the system that discharge is occurring. Thus, all connections must be turned off in order to guarantee that the discharge is stopped. If a system has a large number of connections, each requiring manual shutoff, then a large amount of time can elapse before all the connections are turned off - resulting in a large discharge of hazardous materials. Conversely, if all packaging units connected to the system are equipped with automatic shutoff devices, there is no extra time associated in shutting down a large number of connections to a manifold compared to shutting down only two connections in a single tank to tank transfer. For that reason, we believe that the use of shutoff valves on each item of packaging attached to a manifold adequately addresses the concerns regarding discharges of hazardous materials.

Therefore, instead of the total prohibition proposed in the NPRM, we are revising § 98.30-13 to allow the use of

manifolds for the transfer of hazardous materials to or from a vessel only when all attached packaging units are equipped with an automatic shutoff valve or other automatic means of closure¹ that will activate during an emergency. We note that this restriction will not have any effect on the use of manifolds with portable tanks, as all portable tanks are already required by existing regulations to be equipped with automatic shutoff valves.

C. General Comments

One commenter supported the proposed changes to the regulation, stating that the reduction in time and expense to submit and process waiver requests is a positive change, and will create no reduction in safety. We appreciate the support.

One commenter suggested that there is a misprint in § 98.33-1(b)(4), under applicability. The commenter suggested that a reference to standards for metal IBCs should refer to § 98.30-6, instead of § 98.30-5. We agree that this is a clerical error, and are correcting it in this final rule.

One commenter suggested that instead of references to specific standards in the existing IMDG Code, the Coast Guard should add a general phrase to its regulations

¹ Hereinafter we use “shutoff valve” to refer to both shutoff valves and other automatic closure devices.

requiring tanks to comply with standards set forth in the most current version of the IMDG Code. We are not planning on making this change. Regulations governing incorporations by reference (see 1 CFR 51) do not allow for incorporation in this manner. Furthermore, while we recognize that updating the regulations via the notice and comment process can result in the use of older versions of the Code for periods of time, we believe it is necessary to give notice to the public that the new standard is being adopted and allow public input on the best way to implement new international agreements into U.S. regulations.

One commenter requested that the language "any cargo listed in the IBC Code requiring vessels to meet the standards of the IBC Code for Ship Type 2 or Ship Type 3" be included in the table in § 98.30-7(a), which lists hazardous materials authorized for transfer to and from portable tanks. The commenter stated that this was justified because the cargo tank protection requirements found in the IBC Code (2.6.2.2) provide the same level of cargo protection that is required of the UN and IMO portable tanks and the IBCs if allowed to transport Ship Type 2 cargoes. We disagree with the premise of this comment. The IBC Code relates to tank vessel design, and is not appropriate for regulations concerning intermediate

bulk containers, which are considered packages under 49 CFR subchapters A-C.

D. Clerical Edits

This final rule also contains some additional minor clerical edits. In § 98.30-2(a), the office and address has been updated. In § 98.30-3, "IBC" has been moved to the first definition per alphabetical order, and the paragraph lettering before each definition has been removed. In redesignated §§ 98.30-7(g), 98.30-11, and 98.30-13(a), the words "on board" have been replaced with "onboard." In redesignated § 98.30-16, the office name has been updated. In redesignated § 98.30-18(b)(1), quotation marks have been fixed. In § 98.30-37, the phrase "Coast Guard approved" has been changed to "Coast Guard-approved" and the numerals "2" and "3" were changed to "two" and "three." In § 98.33-3(c), the office name has been updated. In § 98.33-15, citations have been updated to reflect redesignated sections in subpart 98.30.

V. Incorporation by Reference

The Director of the Federal Register has approved the material in 46 CFR 98.30-2 for incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material are available from the sources listed in that section.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866. Nonetheless, we developed an analysis of the costs and benefits of the rule to ascertain its probable

impacts on industry. A final Regulatory Assessment follows:

Table 1: Summary of Affected Population, Costs, and Benefits

| Category | Final rule |
|--|---|
| Applicability | Allows the use of IMO Type 1 and IMO Type 2 portable tanks, UN portable tanks, and IBCs for use in transferring hazardous materials onboard vessels. |
| Affected population | 402 owners and operators of 1,334 OSVs |
| Industry costs (10-year, undiscounted) | Costs: \$51,050 Cost Savings: \$78,780 Net Savings: \$27,730 |
| Benefits | <ul style="list-style-type: none"> • Efficiency gains to industry by increasing the number of pre-approved types of portable tanks and expanding the list of pre-approved hazardous materials they can transport. • Reduces regulatory burden to industry and government by reducing the number of special permits or Competent Authority Approvals to be processed and harmonizing the Coast Guard regulations with PHMSA's HMR regulations. • Minimizes risk of release of hazardous material during transfer by requiring shutoff valve for manifold use. |

1. Allowable Portable Tanks and Pre-Approved Hazardous Materials

In the NPRM published on March 9, 2012, in the Federal Register (77 FR 14327), we proposed amendments to the rules

covering the transfer of hazardous materials on vessels that would expand the lists of allowable portable tanks and pre-approved hazardous materials. We estimated total savings resulting from the relief from requirements to obtain permits for IMO Type 1 and Type 2 portable tanks and IBCs would be \$7,897 per year, discounted at a 7 percent interest rate. This was based on the assessment that, as the inspection and tagging requirements would remain unchanged, there would be no additional regulatory costs. We also estimated that the proposed rule would accrue costs savings from these two provisions²:

- The NPRM proposed expanding the list of allowable portable tanks to include IMO Type 1 and IMO Type 2 portable tanks, UN portable tanks, and IBCs. Without this provision, special permits are needed to use this equipment. The expansion of approved portable tanks reduces the burden on industry to prepare the special permits and the administrative burden to government to process them.
- The NPRM included an expansion of the list of pre-approved hazardous materials. The expansion

² For a complete description of the costs savings estimates, please refer to the Cost Savings section of the NPRM.(77 FR 14332-14333)

of this list has a similar economic benefit as the expansion of allowable portable tanks. It reduces the number of special permits, which generates savings for industry and government.

Table 2 reproduces the NPRM's Table IV.A.3, the summary of the undiscounted cost savings.

Table 2: Undiscounted Cost Savings from the NPRM

| | Special Permit or Competent Authority Approval | Expansion of List of Hazardous Materials | Total |
|-------|--|--|----------|
| Year | Savings | Savings | Savings |
| 1 | \$5,050 | \$7,070 | \$12,120 |
| 2 | \$5,050 | \$0 | \$5,050 |
| 3 | \$5,050 | \$0 | \$5,050 |
| 4 | \$5,050 | \$7,070 | \$12,120 |
| 5 | \$5,050 | \$0 | \$5,050 |
| 6 | \$5,050 | \$0 | \$5,050 |
| 7 | \$5,050 | \$7,070 | \$12,120 |
| 8 | \$5,050 | \$0 | \$5,050 |
| 9 | \$5,050 | \$0 | \$5,050 |
| 10 | \$5,050 | \$7,070 | \$12,120 |
| Total | \$50,500 | \$28,280 | \$78,780 |

Table 3, a copy of the NPRM's Table IV.A.4, displays the cost savings schedule at discounted rates of 7 percent and 3 percent.

Table 3: Schedule of Discounted Cost Savings

| | Total | | |
|------|----------|-----------|-----------|
| Year | Savings | 7 percent | 3 percent |
| 1 | \$12,120 | \$11,327 | \$11,767 |

| | | | |
|------------|----------|----------|----------|
| 2 | \$5,050 | \$4,411 | \$4,760 |
| 3 | \$5,050 | \$4,122 | \$4,621 |
| 4 | \$12,120 | \$9,246 | \$10,768 |
| 5 | \$5,050 | \$3,601 | \$4,356 |
| 6 | \$5,050 | \$3,365 | \$4,229 |
| 7 | \$12,120 | \$7,548 | \$9,855 |
| 8 | \$5,050 | \$2,939 | \$3,987 |
| 9 | \$5,050 | \$2,747 | \$3,870 |
| 10 | \$12,120 | \$6,161 | \$9,018 |
| Total | \$78,780 | \$55,467 | \$67,231 |
| Annualized | | \$7,897 | \$7,882 |

We are not aware of any information, either from the comments or other sources, that alters that assessment. There are no changes in this final rule that will alter any of the assumptions relating to this part of the rule. Therefore, for this final rule, we retain the NPRM's annualized estimate of total savings resulting from the permitting changes, discounted at a 7 percent rate, of \$7,897.

In summary, the benefits of these provisions are that it will provide greater flexibility to industry by increasing the types of packaging available for use, increasing the list of pre-approved hazardous materials they can contain, and reducing the need for special permits. The Government will also benefit from processing fewer Competent Authority Approvals. We also expect an increase in regulatory efficiency, as our regulations will

align with international standards.

2. Modification to the Proposed Prohibition of Manifolds

(a) Manifold provision.

As previously discussed in section V, "Discussion of Comments and Changes", we are not finalizing a provision in the NPRM that would have prohibited the use of manifolds in the transfer of hazardous materials to or from a vessel. Instead, in this final rule, we decided to continue to allow the use of a manifold with packaging equipment, as long as each packaging attached to the manifold is equipped with a shutoff valve. Accordingly, we incorporate the cost of complying with this new requirement into the economic analysis of this final rule.

Table 4 summarizes the current practices with respect to transferring material from packaging and assesses the required change under the final rule.

Table 4: Comparison and Cost Implications of Baseline and Post-Rule Practices

| Packaging Type | Baseline Practice (Onshore Transfer) | Post-Rule Practice (Onboard Transfer) | Change in Practice |
|----------------|--------------------------------------|---------------------------------------|-----------------------------------|
| Portable Tanks | Sequential Fill | Allowed | No change |
| | Manifold | Allowed with shutoff valve | No change: Portable tanks already |

| | | | |
|---|--------------------------------|-----------------------------|------------------------------|
| | | | equipped with shutoff valves |
| IBC (Allowed by special permit for transport) | Sequential Fill | Allowed | No change |
| | Manifold with shutoff valve | Allowed | No change |
| | Manifold without shutoff valve | Manifold with shutoff valve | Cost for shutoff valve |
| | | Sequential fill | Cost for Additional labor |

The only vessel operators that will incur costs under the final rule are users of IBCs, not equipped with shutoff valves, who are currently accomplishing transfers using a manifold. These operators have the option of installing a shutoff valve and continuing to use a manifold or use the sequential fill method resulting in additional labor to connect and disconnect packaging. In the remainder of this section we estimate the cost and benefit analysis of the manifold provision of this final rule.

(b) Cost of a shutoff valve.

We note that many IBCs come equipped with shutoff valves. One example is the PHMSA Special Permit "SP4212" standard, a commonly-used design specification for IBCs used in intermodal commerce. A review of industry web sites indicates that shutoff valves are readily available

on the commercial market.³

From a web search, we found examples of shutoff valves with prices.⁴ The only difference in the examples was the size of the pipe opening, which ranged from 1.25 inches to 3 inches. To obtain a unit purchase cost estimate, we calculated the average of the lowest and highest prices, which was \$1,015.

Our estimate of the loaded wage rate for a pump operator is \$34 per hour⁵. We estimate that it would take 10 minutes to install a shutoff valve. The installation cost is approximately \$6 ((10/60) * \$34, rounded). Valves are expected to have a similar lifespan to the tanks for which they are used. Therefore, it is our expectation that a shutoff valve will last the life of the IBC in question. The total 10-year cost for a shutoff valve is \$1,021, consisting of \$1,015 to purchase the unit plus \$6 for installation.

(c) Additional labor costs to sequentially fill IBCs.

The sequential fill option involves additional labor costs associated with connecting and disconnecting. The

³See Hoover Solutions—(<http://www.partresource.com/index.php/by-types/valves.html>).

⁴Dultmeier Sales, <http://www.dultmeier.com/catalog/0.689.2495.3926>

⁵http://www.bls.gov/oes/oes_dl.htm, May 2011 data, occupation 53-7027, pump operators, except well-head, h-hour column in national cross-industry data file, the average wage is \$22.31 per hour. We calculated a load factor of 1.52 from the June 2011 employee compensation data for production, transportation, and material moving occupations—total compensation \$24.20 / wages and salaries \$15.96 (<ftp://ftp.bls.gov/pub/special.requests/ocwc/ect/eccecqrtn.pdf>, p. 27).

additional costs of the sequential filling of IBCs are dependent on a number of variables, such as capacity of the IBC, the speed of the pump accomplishing the transfer, and the amount of hazardous material being transferred. The following analysis estimates costs based on a set of reasonable assumptions regarding these inputs. The inputs are:

- Labor cost of \$34 per hour, as used to calculate the installation time.
- Labor times: We estimate the following times for these tasks:
 - Connect or disconnect a portable tank or IBC to pump, 10 minutes.
 - Set-up or break-down pump-manifold configuration, 15 minutes.
 - Connect or disconnect an IBC to a manifold, 5 minutes.
- Equipment characteristics:
 - Capacity of the IBCs: One vendor offers IBCs that range from 125 to 550 gallons⁶ and another has one with a 630 gallon (15

⁶ Hoover Container Solutions, <http://www.hooversolutions.com/caged-poly-ibc.html>.

barrel)⁷ capacity. For this scenario we use a mid-range capacity of 300 gallons.

- Pump Speed: From a web search, we found pumps with speeds from 37 gallons per minute (GPM)⁸ to 1,200 GPM⁹. For this scenario we will use a pump rated at 50 gallons per minute, under the assumption that the lower speed offers more control of the transfer. This results in a fill time of 6 minutes (300 gallons / 50 gallons per minute).
- The total amount to be transferred is 1,500 gallons. Applying the earlier input of IBCs with a 300 gallon capacity, the transfer will need five IBCs (1,500 total / 300 gallons per IBC).

For the analysis, we divided the transfer into these tasks:

- Connect to pump: For the manifold method, this task consists of connecting the manifold to the pump. For the sequential fill method, the IBC is connected to the pump.
- Connect to manifold: The task applies only the

⁷ Magnum Mud Equipment Company, Mangum Dual Purpose 155 Barrel IBC tank, http://www.magnummud.com/eqt_certified_transport_tanks_dual_15bbl.htm.

⁸ Air diaphragm pump from Magnum Mud Equipment Co., http://www.magnummud.com/eqt_pumps_M2.htm

⁹ Centrifugal pump from Magnum Mud Equipment Co., http://www.magnummud.com/eqt_pumps_6x8.htm

manifold method; the IBCs are connected to the manifold.

- Disconnect from manifold: When the transfer is completed using the manifold method, the IBCs are disconnected from the manifold.
- Disconnect from pump: The equipment that was directly connected to the pump is disconnected. For the manifold method this is the manifold and for the sequential fill method it is the IBC.

We applied the inputs described above to these tasks to estimate total times under both the manifold and sequential fill methods. Table 5 displays the results of these calculations.

Table 5: Task Analysis of 1,500 Gallon Transfer, Values in Minutes

| Task | Manifold-IBC Method | | | Sequential Fill Method | | |
|--------------------------|---------------------|--------|-----------|------------------------|--------|------------|
| | Time | Number | Total | Time | Number | Total |
| Connect to Pump | 15 | 1 | 15 | 10 | 5 | 50 |
| Connect to Manifold | 5 | 5 | 25 | N/A | | 0 |
| Disconnect from Manifold | 5 | 5 | 25 | N/A | | 0 |
| Disconnect from Pump | 15 | 1 | 15 | 10 | 5 | 50 |
| Total Equipment | | | 80 | | | 100 |
| Transfer time | | | 6 | | | 30 |
| Total Time | | | 86 | | | 130 |

For this scenario, the additional time for the sequential fill method is 44 minutes (130-86). Using the loaded wage rate of \$34 per hours, this yields an additional cost per transfer of \$25 $((44/60) * \$34)$.

(d) Cost to industry.

Based on Coast Guard estimates in the NPRM, there are approximately 50 IBCs currently in use on OSVs¹⁰. Based on publicly available information from vendors and relevant trade associations, we do not have information on how many IBCs used by the OSV industry currently use manifolds for transfers or how many of the IBCs are currently equipped with shutoff valves. Further, we do not have information on how many operators will chose to comply by installing a shutoff valve or employ the sequential fill method. We did not receive any information in the public comments for the NPRM on these issues.

For the purposes of this regulatory analysis, Table 6 presents a sensitivity analysis of total cost to industry at quartile assumptions of current usage of shutoff valves. Key inputs are total IBC population of 50 from the NPRM and the unit cost of \$1,021 as derived above.

Table 6: Sensitivity Analysis of Shutoff Valve Costs

¹⁰ This is a rounding of the 45 IBCs in the “Cost Savings” section of the NPRM, 77 FR 14332,

| Number and Percent of IBCs currently with shutoff valves | IBCs needing shutoff valves | Cost |
|--|-----------------------------|----------|
| 50 (100 percent) | 0 | \$0 |
| 37 (74 percent) | 13 | \$13,275 |
| 25 (50 percent) | 25 | \$25,525 |
| 12 (24 percent) | 38 | \$38,798 |
| 0 (0 percent) | 50 | \$51,050 |

As Table 6 shows, the maximum cost to industry would be \$51,050 if all IBCs chose to install shut-off valves. The sequential fill method involves an additional labor cost of \$25 per transfer. It would require 41 transfers (\$1,021 divided by \$25) over the 10-year period of analysis before the cost of the additional labor exceeds the cost of the shutoff valve.

(e) Benefits.

As stated in the Discussion of Comments and Changes section above, when using manifolds, the emergency shutoff during the transfer to and from a portable tank or IBC should be automatic. The use of automatic shutoff valves with manifolds can substantially reduce the quantities of hazardous materials discharged in the event of an emergency by quickly stopping the flow of materials from each tank.

3. Summary of Costs and Net Savings, and Benefits

Table 7 presents the 10-year costs and net savings information schedule. As noted above, we have no

additional information to alter the savings estimates presented in the NPRM regarding the expansions of the lists of allowable portable tanks and pre-approved hazardous materials. These data are presented in Table 7 in the columns labeled "Permit Savings", "HLC Savings", and "Total Savings". The "Shutoff Valve Cost" column adds the \$51,050 cost for the shutoff valve in Year 1 and the "Net Savings" column is "Total Savings" less the "Manifold Compliance Costs."

As shown in the "Total" row this rulemaking will produce a net savings of \$27,730 on an undiscounted basis over 10 years.

Table 7: 10-Year Schedule of Net Savings, Undiscounted

| Year | Permit Savings | HLC Savings | Total Savings | Manifold Compliance Cost | Net Savings |
|-------|----------------|-------------|---------------|--------------------------|-------------|
| 1 | \$5,050 | \$7,070 | \$12,120 | \$51,050 | -\$38,930 |
| 2 | \$5,050 | \$0 | \$5,050 | \$0 | \$5,050 |
| 3 | \$5,050 | \$0 | \$5,050 | \$0 | \$5,050 |
| 4 | \$5,050 | \$7,070 | \$12,120 | \$0 | \$12,120 |
| 5 | \$5,050 | \$0 | \$5,050 | \$0 | \$5,050 |
| 6 | \$5,050 | \$0 | \$5,050 | \$0 | \$5,050 |
| 7 | \$5,050 | \$7,070 | \$12,120 | \$0 | \$12,120 |
| 8 | \$5,050 | \$0 | \$5,050 | \$0 | \$5,050 |
| 9 | \$5,050 | \$0 | \$5,050 | \$0 | \$5,050 |
| 10 | \$5,050 | \$7,070 | \$12,120 | \$0 | \$12,120 |
| Total | \$50,500 | \$28,280 | \$78,780 | \$51,050 | \$27,730 |

Table 8 presents the undiscounted data from Table 6 and adds discounted values using interest rates of 7

percent and 3 percent.

Table 8: 10-Year Schedule of Net Savings, Undiscounted and Discounted

| | Net | | |
|------------|-----------|-----------|-----------|
| Year | Savings | 7 percent | 3 percent |
| 1 | -\$38,930 | -\$36,383 | -\$37,796 |
| 2 | \$5,050 | \$4,411 | \$4,760 |
| 3 | \$5,050 | \$4,122 | \$4,621 |
| 4 | \$12,120 | \$9,246 | \$10,768 |
| 5 | \$5,050 | \$3,601 | \$4,356 |
| 6 | \$5,050 | \$3,365 | \$4,229 |
| 7 | \$12,120 | \$7,548 | \$9,855 |
| 8 | \$5,050 | \$2,939 | \$3,987 |
| 9 | \$5,050 | \$2,747 | \$3,870 |
| 10 | \$12,120 | \$6,161 | \$9,018 |
| Total | \$27,730 | \$7,757 | \$17,668 |
| Annualized | | \$1,104 | \$2,071 |

Our estimates indicate that under a maximum cost scenario, the final rule will produce an annualized net savings of \$1,104 at a 7 percent discount rate. To the extent that companies have voluntarily installed shutoff valves on IBCs or decide against purchasing them because they find that switching to the sequential transfer method is more cost-efficient, the costs will be less and the net savings greater than the estimates presented in tables 7 and 8.

4. Summary of Benefits

The final rule will provide greater flexibility to industry by increasing the number of allowable types of portable tanks available for use, increasing the list of pre-approved hazardous materials they can transport, and reducing the need for special permits. The Government will also benefit from processing fewer special permits or Competent Authority Approvals. We also expect an increase in regulatory efficiency, as our regulations will be better aligned with international standards.

Additionally, the final rule mandates the use of shutoff valves with manifolds. In the event of an emergency, the shutoff valve would help to reduce the amount of hazardous materials spilling into the marine environment, while still limiting the potential for injuries associated with multiple attachment operations at sea that manifolds provide.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000.

As described in section VII, "Regulatory Analyses", the final rule will permit the use of manifolds only if shutoff valves are also installed.

For the revenue impact analysis we assume that the cost for shutoff valves will be incurred by the users of IBCs. We reviewed ownership data of entities that lease IBCs used in the cost analyses and determined that all of the owners of the IBCs are businesses, none of which are owned by not-for-profit organizations or governments.

Based on a search, we picked a representative sample of 77 businesses whose inventory of portable tanks may at some time include the IBCs used by the OSV industry. To determine the size standards we used the size standards (or threshold) from the Small Business Administration (SBA). We used www.Manta.com to estimate revenue and number of employees.¹¹ Table 9 provides the breakdown of businesses by size.

Table 9: Number of Entities Impacted by the Proposed Rule

| Entities | Number | Percentage |
|--------------------------------------|--------|------------|
| Businesses that Exceed SBA Standards | 4 | 5 |
| Foreign owned entities | 26 | 34 |

¹¹ As indicated by either their revenue or personnel data for businesses. We used www.Manta.com to determine size standards.

| | | |
|--|----|-----|
| Small Businesses with revenue data | 26 | 34 |
| Unknown, assumed Small Business ¹ | 21 | 27 |
| Total | 77 | 100 |

¹Revenue information on these 26 were not available, which are then considered to be small

Of the 77 businesses in the sample, we identified 26 as foreign-owned entities. We found revenue data for 30 businesses, of which 4 exceed the SBA limit and 26 qualify as small businesses. We did not find revenue data for 21 businesses and assume these are small, for a total of 47 (61 percent) small businesses in the sample. The reference population for the analysis consists of the 26 small business for whom we found revenue data. With those inputs, we distributed the 50 IBCs evenly across the 26 small entities.¹² Assuming that all businesses elect to install shutoff valves rather than use the sequential-fill method with IBCs, the average cost per entity is \$2,042 (\$1,021 per shutoff valve X 2 shutoff valves per entity).

Table 10: Small Entity Revenue Impact Analysis

| Impact Range | Number of Entities | Percent of Total |
|--------------|--------------------|------------------|
| 0-1 percent | 25 | 96 |
| 1-3 percent | 1 | 4 |

¹² Companies offering IBCs include: <http://www.magnummud.com/equipment.htm>, <http://www.ccrcontainers.com/?q=en/product/chemicals>, <http://www.hooversolutions.com/stainless-steel-ibc-rentals.html>, <http://www.greif.com/products-services/rigid/intermediate-bulk-containers.html>, <http://girardequip.com/products/intermediate-bulk-containers>, <http://ibcresource.com/tankrentals.asp>.

| | | |
|----------------------|---|---|
| 3 percent or more | 0 | 0 |
|----------------------|---|---|

Entities are categorized by the North American Industry Classification System (NAICS) codes¹³. By using SBA criteria for small businesses, the associated NAICS codes, and the 2007 United States Economic Census data¹⁴, we are able to provide an overview of companies that lease out IBCs and manifolds. Table 11 provides the top 5 NAICS Codes of the identified small businesses.

Table 11: Top Five NAICS Codes of Identified Small Businesses

| NAICS | Industry | Percent- age of Small Entities | SBA Size Threshold (less than threshold small) | SBA Size Standard Type | No. of Entities |
|--------|--|---|--|------------------------------|--------------------|
| 322220 | Paper Bag and Coated and Treated Paper Manufacturing | 29 | 500 | Employees | 8 |
| 314999 | All Other Miscellaneous Textile Product Mills | 7 | 500 | Employees | 2 |
| 423830 | Industrial Machinery and Equipment Merchant Wholesalers | 7 | 100 | Employees | 2 |

¹³ Small business information can be accessed online at <http://www.sba.gov/size/indextableofsize.html>.

¹⁴ U.S. Census Bureau information can be accessed online at http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ECN&_tabId=ECN1&_submenuId=datasets_4&_lang=en&_ts=246366688395.

| | | | | | |
|--------|---|-----|-----|-----------|----|
| 424130 | Industrial and Personal Service Paper Merchant Wholesalers | 7 | 100 | Employees | 2 |
| 424990 | Other Miscellaneous Nondurable Goods Merchant Wholesalers | 7 | 100 | Employees | 2 |
| | all Other NAICS | 43 | | | 12 |
| Total | | 100 | | | 28 |

Note: Some of the NAICS used dates back to 2007. NAICS 322223, 322224, and 322221 were combined to 322220.

The analysis of the industries, as summarized in Table 11 shows that the companies leasing IBCs are spread across five industries.

The Coast Guard expects that this final rule will not have a significant economic impact on small entities. As described in the regulatory analysis, this final rule will reduce regulatory burdens by eliminating the need for special permits or Competent Authority Approvals for the specified portable tanks and hazardous materials and thus generate an savings to the industry. Our revenue impact analysis shows that 96 percent of the small entities will be impacted by less than 1 percent.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This rule calls for a modification to an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). It will modify existing Office of Management and Budget (OMB) Collection of Information: OMB Control Number 2137-0051, "Rulemaking, Special Permits, and Preemption Requirements."

As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping,

monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the change in annual burden follow. The estimate covers the time for preparing or renewing special permit or Competency Authority Approval requests for carrying hazardous materials.

TITLE: Rulemaking, Special Permits, and Preemption Requirements

OMB CONTROL NUMBER: 2137-0051

This collection of information applies to rulemaking procedures regarding PHMSA's HMR regulations. Specific areas covered in this information collection include 49 CFR part 105, subparts A and B, "Hazardous Materials Program Definitions and General Procedures;" 49 CFR part 106, subpart B, "Participating in the Rulemaking Process;" 49 CFR part 107, subpart C, "Preemption;" and 49 CFR part 107, subpart H, "Approvals, Registrations and Submissions."

This rule will expand the types of allowed portable tanks and expand the list of allowed hazardous materials permitted in those tanks. Under current regulations, the use of these tanks or the transfer of the hazardous materials specified would require a special permit or Competent Authority Approval from PHMSA's AAHMS. Under

this rule, these special permits or Competent Authority Approvals will no longer be needed. Eliminating these special permits or Competency Authority Approvals will reduce the burden associated with the OMB Control Number 2137-0051 by reducing the number of respondents, responses, and burden hours associated with special permit or Competency Authority Approval requests. We contacted DOT regarding this collection of information, and it validated our methodology and concurred that this rule will impact the referenced ICR. However, DOT will defer any adjustments to the ICR until the final rule is published.

SUMMARY OF COLLECTION OF INFORMATION: The rule will impact the burden associated with 49 CFR part 107, Subpart H, "Approvals, Registrations and Submissions." The rule will eliminate the need for special permit or Competent Authority Approval applications and therefore reduce the burden associated with that part of the collection. As previously stated, we contacted DOT regarding this collection of information.

NEED FOR INFORMATION: Special permit or Competent Authority Approval procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by PHMSA's HMR regulations.

USE OF INFORMATION: The information collected under this ICR is used in the review process by PHMSA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for special permits or Competent Authority Approvals, preemption determinations and waivers of preemption determinations. This rule will affect special permit or Competent Authority Approval requests, which PHMSA's AAHMS would need to determine the merits and use of the unallowed tanks.

DESCRIPTION OF RESPONDENTS: The respondents impacted by this rule are owners and operators of OSVs requesting the use of unauthorized portable tanks as well as owners and operators of OSVs requesting approval to transport unauthorized hazardous material.

NUMBER OF RESPONDENTS: The number of respondents affected by this ICR is 8,770. The number of respondents impacted by this rule will be 402 owners and operators of OSVs.

FREQUENCY OF RESPONSE: Without the rule, we estimate each respondent would have to provide a response every 2-5 years or one response per ICR renewal cycle.

BURDEN OF RESPONSE: The savings in burden hours per request is estimated at 5.5 hours (5-hour special permit or

Competent Authority Approval requests + 0.5-hour recordkeeping).

ESTIMATED TOTAL ANNUAL BURDEN: Currently, the ICR annual hour burden is 4,219, of which 792 hours are the result of 144 special permit or Competent Authority Approval requests per year. As IM 101 and IM 102 portable tanks phase out, we expect an additional five special permits or Competent Authority Approvals per year over the 3-year ICR renewal period. This would add 27.5 future burden hours per year to the current 4,219 approved hourly estimate. As this rule will eliminate the need for these special permit or Competent Authority Approval requests, it will eliminate the future burden by 27.5 hours per year. We estimate that expanding the list of hazardous materials approved for transfer to and from the specified portable tanks and IBCs will eliminate the filing of seven special permits or Competent Authority Approvals per 3-year ICR renewal cycle. At 5.5 hours per special permit or Competent Authority Approval, this will be an additional reduction of 38.5 hours of regulatory burden per 3-year period.

REASON FOR PROPOSED CHANGE: The rule will eliminate the need for special permit or Competent Authority Approval requests for unauthorized portable tanks and IBCs as well

as the unauthorized transport of hazardous materials. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this final rule to the OMB for its review of the collection of information. You are not required to respond to a collection of information unless it displays a currently valid control number from OMB. Before the collection requirements in this final rule can be enforced, OMB must approve the action of the collection of information.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among levels of government.

We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of OMB's Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use

voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule uses the following voluntary consensus standards: International Maritime Dangerous Goods Code (IMDG) 2010 Edition, Amendment 35-10, Section: 4.2.0.1. The sections that reference these standards and the locations where these standards are available are listed in 46 CFR 98.30-2.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant

effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(d) and (e) of the Instruction and 6(a) of the Federal Register, 67 FR 48243, July 23, 2002. This rule involves regulations concerning inspection and equipping of vessels, regulations concerning equipment approval and carriage requirements and regulations concerning vessel operation safety standards. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 98 as follows:

PART 98--SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

1. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3307, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 98.30--Portable Tanks and Intermediate Bulk Containers

2. Revise the heading for subpart 98.30 to read as shown above.

3. Amend § 98.30-1 as follows:

a. In paragraph (a), after the words "portable tanks", add the words "and Intermediate Bulk Containers (IBCs)";

b. In paragraph (b) introductory text, after the words "portable tanks", add the words "and IBCs";

c. In paragraph (b)(1), remove the symbol ";" and add, in its place, the symbol ".";

d. Revise paragraphs (b)(2) and (b)(3); and

e. Add paragraph (b)(4).

The revisions and addition read as follows:

§ 98.30-1 Applicability.

* * * * *

(b) * * *

(2) An IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank.

(3) A portable tank authorized for hazardous materials by the Associate Administrator for Hazardous Materials Safety (AAHMS) of the Pipeline and Hazardous Materials Safety Administration (PHMSA), under a special

permit or Competent Authority Approval issued in accordance with 49 CFR part 107, subpart H.

(4) An IBC, but restricted to those metal IBCs as described in § 98.30-6 of this subpart.

§ 98.30-17 [Redesignated]

4. Redesignate § 98.30-17 as § 98.30-18.

§§ 98.30-13 through 98.30-15 [Redesignated as §§ 98.30-15 through 98.30-17]

5. Redesignate §§ 98.30-13 through 98.30-15 as §§ 98.30-15 through 98.30-17, respectively.

§§ 98.30-6 through 98.30-11 [Redesignated as §§ 98.30-9 through 98.30-14]

6. Redesignate §§ 98.30-6 through 98.30-11 as §§ 98.30-9 through 98.30-14, respectively.

§ 98.30-5 [Redesignated]

7. Redesignate § 98.30-5 as § 98.30-7.

§§ 98.30-2 through 98.30-4 [Redesignated as §§ 98.30-3 through 98.30-5]

8. Redesignate §§ 98.30-2 through 98.30-4 as §§ 98.30-3 through 98.30-5, respectively.

9. Add new § 98.30-2 to read as follows:

§ 98.30-2 Incorporation by Reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the

Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-ENG), 2100 2nd St. SW, Stop 7126, Washington, DC 20593-7126, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom, (Phone (44 020 7735 7611); Website: <http://www.imo.org>.)

(1) International Maritime Dangerous Goods (IMDG) Code, 2012 Edition, Section: 4.2.0.1, IBR approved for § 98.30-3.

(2) International Maritime Dangerous Goods (IMDG) Code, 2012 Edition, Section: 6.7.2 through 6.7.2.20.3, IBR approved for § 98.30-5.

10. Revise newly redesignated § 98.30-3 to read as follows:

§ 98.30-3 Definitions.

IBC means an intermediate bulk container as defined in 49 CFR 171.8.

IM 101 portable tank and IM 102 portable tank means a portable tank constructed and approved by PMSA and manufactured on or before January 1, 2003, that meets the requirements for continued use under 49 CFR 173.32.

IMO Type 1 portable tank means a portable tank constructed in accordance with International Maritime Dangerous Goods (IMDG) Code (2012 Edition), that meets the definition of an IMO Type 1 portable tank under Section 4.2.0.1 of the IMDG Code (incorporated by reference, see § 98.30-2), and that meets the provisions for continued use under the IMDG Code.

IMO Type 2 portable tank means a portable tank constructed in accordance with the IMDG Code, that meets the definition of an IMO Type 2 portable tank under Section 4.2.0.1 of the IMDG Code (incorporated by reference, see § 98.30-2), and that meets the provisions for continued use under the IMDG Code.

MPT means a marine portable tank that was inspected and stamped by the Coast Guard on or before September 30,

1992, and that meets the applicable requirements in this part and part 64 of this chapter.

UN portable tank means a portable tank constructed in accordance with 49 CFR 178.274 and 178.275, and approved in accordance with 49 CFR 173.32 and 178.273.

11. Amend newly redesignated § 98.30-5 as follows:

a. Revise paragraphs (a)(1), (a)(2) introductory text, and (a)(2)(i);

b. In paragraph (a)(2)(ii), remove the word "exemption" and add, in its place, the words "special permit";

c. Revise paragraph (b);

d. Redesignate paragraph (c) as paragraph (d) and revise newly redesignated paragraph (d); and

e. Add new paragraph (c).

The revisions and additions read as follows:

§ 98.30-5 Vessels carrying portable tanks other than MPTs.

(a) * * *

(1) An IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank authorized for its contents in accordance with 49 CFR 172.101, Hazardous Materials Table, Columns 7 and 8C.

(2) A portable tank authorized by PHMSA's AAHMS under a special permit or Competent Authority Approval issued in accordance with 49 CFR part 107, subpart H.

(i) According to the terms of the special permit or Competent Authority Approval, equivalent to an IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank.

* * * * *

(b) Each IM 101, IM 102, or UN portable tank must be tested and inspected in accordance with 49 CFR part 180, subpart G and follow specifications in accordance with 49 CFR 178.275(c).

(c) Each IMO Type 1 or IMO Type 2 portable tank must be tested and inspected in accordance with Sections 6.7.2 through 6.7.2.20.3 of the IMDG Code (incorporated by reference, see § 98.30-2).

(d) Each portable tank authorized under a special permit or Competent Authority Approval from PHMSA's AAHMS must be inspected, tested, maintained, and used in accordance with the terms of that special permit or Competent Authority Approval.

12. Add new § 98.30-6 to read as follows:

§ 98.30-6 Vessels carrying IBCs.

Intermediate Bulk Containers (IBCs) with a classification of 31A may be used on a vessel to which this

part applies and must meet at a minimum the following constructional requirements:

(a) The shell thickness must be a minimum 6.36 mm (0.25 inches) in reference steel.

(b) There must be a self-closing relief valve set to open at no less than 5 psig.

(c) Closures used on fill openings, in excess of 20 square inches, must be equipped with a device to prevent them from fully opening without first relieving internal pressure.

(d) All venting requirements must be followed in accordance with 49 CFR 178.345-10, Table 1.

13. Amend newly redesignated § 98.30-7 as follows:

a. In paragraph (a)(1), remove the words "or "ORM-E"" and add, in their place, the words "'hazardous substance", or "hazardous waste"";

b. Revise paragraph (a)(2)(iii);

c. In paragraph (a)(3), after the words "material listed in", remove the text "Table 98.30-5(a)" and add, in its place, the words "Table 98.30-7(a)--Certain Hazardous Materials Authorized For Transfer To and From Portable Tanks";

d. Redesignate Table 98.30-5(a) as Table 98.30-7(a) and transfer the newly redesignated table to the end of the section;

e. Revise paragraphs (b), (e), and (f); and

f. In paragraph (g), remove the words "on board" and add, in their place, the word "onboard".

The revisions and additions read as follows:

§ 98.30-7 Materials authorized for transfer to and from a portable tank.

(a) * * *

(2) * * *

(iii) Is authorized for transport in an IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank under subpart F of 49 CFR part 173;

* * * * *

(b) Grade D and Grade E combustible liquids with a flashpoint of 100°F (38°C) or higher by closed cup test that are not listed by name in the Hazardous Materials Table of 49 CFR 172.101 may be transferred to and from an MPT, IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank conforming to the T Code "T1" specified in 49 CFR 172.102(c)(7)(i).

* * * * *

(e) Environmentally hazardous substances (see paragraph (a)(4) of this section) may be transferred only to and from an MPT, IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank.

(f) A portable tank authorized for transfer of hazardous material in this section may be substituted by another portable tank in accordance with 49 CFR 173.32(b).

* * * * *

Table 98.30-7(a)—Certain Hazardous Materials Authorized For Transfer To and From Portable Tanks

| |
|---|
| Acetone |
| Alcohols; flash point of 80 °F (27 °C) or less by open-cup test |
| Benzene |
| Gasoline |
| Liquid Nitrogen |
| Mixtures of Hydrochloric acid and hydrofluoric acid containing not more than 36 percent hydrochloric acid or 2 percent hydrofluoric acid ¹ |
| Methyl Ethyl Ketone |
| Mixtures of hydrochloric acid and hydrofluoric acid |

| |
|---|
| containing not more than 24 percent hydrochloric acid or 6 percent hydrofluoric acid ¹ |
| Toluene (Toluol) |
| Corrosive liquid, toxic, N.O.S. (Mixtures of hydrochloric acid, hydrofluoric acid, and fluoboric acid), UN 2922, packing group II, containing not more than 11 percent hydrofluoric acid ¹ |

Note: ¹Each MPT must be lined with rubber or with material equally acid-resistant and equally strong and durable.

14. Add new § 98.30-8 to read as follows:

§ 98.30-8 Materials authorized for transfer to and from an IBC.

Any hazardous material listed in Table 98.30-7(a) of § 98.30-7 may be transferred to and from an IBC under this subpart, with the exception of Liquid Nitrogen.

15. Revise newly redesignated § 98.30-9 to read as follows:

§ 98.30-9 Lifting a portable tank or IBC.

(a) No person may lift a portable tank and/or IBC with another portable tank and/or IBC.

(b) All lifting requirements for IBCs must be followed in accordance with 49 CFR 178.704(c) and (f).

§ 98.30-10 [Amended]

16. In newly redesignated § 98.30-10, after the words "portable tank", add the words "or IBC".

17. In newly redesignated § 98.30-11, remove the words "on board" and add, in their place, the word "onboard".

18. Amend newly redesignated § 98.30-12 as follows:

a. Revise the section heading;

b. In paragraph (a), after the words "portable tank", add the words "and/or IBC";

c. In paragraph (b) introductory text, after the words "portable tank", add the words "and/or IBC"; and

d. Add new paragraph (c).

The revision and addition read as follows:

§ 98.30-12 Stowage of portable tanks and IBCs.

* * * * *

(c) All IBCs must be secured as specified in 49 CFR 176.74.

19. Amend newly redesignated § 98.30-13 as follows:

a. Redesignate the introductory text, paragraph (a), and paragraph (b) as paragraphs (a) introductory text, (a)(1), and (a)(2), respectively;

b. In redesignated paragraph (a) introductory text, after the words "portable tank", add the words "or IBC" and

remove the words "on board" and add, in their place, the word "onboard";

c. Revise redesignated paragraph (a)(1); and

d. Add new paragraphs (a)(3) and (b).

The revision and additions read as follows:

§ 98.30-13 Pipe connections, and filling and discharge openings.

(a) * * *

(1) For an IM 101, IM 102, IMO Type 1, IMO Type 2, or UN portable tank, the closures specified in 49 CFR 178.275.

* * * * *

(3) For an IBC, the closures specified in 49 CFR 178.705.

(b) A manifold cannot be used when transferring a hazardous material to or from a portable tank or IBC onboard a vessel, unless the portable tank or IBC is equipped with a remote or automatic shutoff valve or other automatic means of closure that will activate during an emergency.

§ 98.30-15 [Amended]

20. In newly redesignated § 98.30-15(a), after the words "portable tank", add the words "or IBC".

21. Amend newly redesignated § 98.30-16 as follows:

- a. Revise the section heading;
- b. Remove the text "(CG-OES)" wherever it appears and add, in its place, the text "(CG-ENG)";
- c. In paragraph (a) introductory text, remove the word "shall" and add, in its place, the word "must"; and
- d. Add new paragraph (c).

The revision and addition read as follows:

§ 98.30-16 Requirements for ships carrying NLSs in portable tanks and IBCs.

* * * * *

(c) Any ship that carries NLSs in an IBC, as described in § 98.30-6, must meet all requirements in accordance with 46 CFR 125.120.

22. Amend newly redesignated § 98.30-18 as follows:

a. In paragraph (a) remove the word "shall" and add, in its place, the word "must", and after the words "portable tank", add the words "or IBC";

b. In paragraph (b) introductory text, after the words "portable tank", add the words "or IBC", and remove the word "shall", and add, in its place, the word "must"; and

c. Revise paragraph (b)(1) to read as follows:

§ 98.30-18 Qualifications of person in charge.

* * * * *

(b) * * *

(1) On a tank barge, hold a "Tankerman-PIC", restricted "Tankerman-PIC", "Tankerman-PIC (Barge)", or restricted "Tankerman-PIC (Barge)" endorsement on his or her merchant mariner credential or merchant mariner's document authorizing transfer of the classification of cargo involved;

* * * * *

§ 98.30-19 [Amended]

23. In § 98.30-19, in paragraphs (b) and (c), after the words "portable tank", add the words "or IBC".

§ 98.30-21 [Amended]

24. In § 98.30-21, in the introductory text and paragraphs (b) and (c), after the words "portable tank", add the words "or IBC".

§ 98.30-23 [Amended]

25. In § 98.30-23, in the introductory text, after the words "portable tank", add the words "or IBC".

§ 98.30-25 [Amended]

26. In § 98.30-25, after the words "portable tank", add the words "or IBC".

§ 98.30-27 [Amended]

27. In § 98.30-27, in paragraph (a) introductory text, remove the word "shall" and add, in its place, the word "must".

§ 98.30-29 [Amended]

28. In § 98.30-29, after the words "portable tank", add the words "or IBC".

§ 98.30-31 [Amended]

29. In § 98.30-31, in the introductory text, after the words "portable tank or", add the words "IBC or".

§ 98.30-33 [Amended]

30. In § 98.30-33, in paragraph (a) introductory text and paragraph (b), after the words "portable tank", add the words "or IBC".

§ 98.30-35 [Amended]

31. In § 98.30-35, after the words "portable tank", add the words "or IBC".

§ 98.30-37 [Amended]

32. Amend § 98.30-37 as follows:

a. In the introductory text, after the words "portable tank", add the words "or IBC";

b. In paragraph (b), remove the words "Coast Guard approved" and add, in their place, the words "Coast Guard-approved";

c. In paragraph (d), remove the numeral "2" and add, in its place, the word "two"; and

d. In paragraph (e), remove the numeral "3" and add, in its place, the word "three".

Subpart 98.33-- Portable Tanks and IBCs for Certain Grade E Combustible Liquids and Other Regulated Materials

33. Revise the heading for subpart 98.33 to read as shown above.

34. Amend § 98.33-1 as follows:

a. Revise paragraph (b) (1);

b. Remove the Note to paragraph (b) (1);

c. In paragraph (b) (2), remove the text "; and" and add, in its place, the symbol "."; and

d. Add new paragraph (b) (4)

The revision and addition read as follows:

§ 98.33-1 Applicability.

* * * * *

(b) * * *

(1) A DOT-specification 57 portable tank constructed on or before October 1, 1996, or a UN portable tank (see 49 CFR 173.32 and § 98.30-3).

* * * * *

(4) An Intermediate Bulk Container (IBC), but restricted to those metal IBCs as described in § 98.30-6.

§ 98.33-3 [Amended]

35. Amend § 98.33-3 as follows:

a. In the introductory text, after the words "portable tanks", add the words "or IBCs"; and

b. In paragraph (c), after the word "Commandant", add the text "(CG-ENG)".

36. Amend § 98.33-5 as follows:

a. Revise the section heading;

b. Redesignate the introductory text, paragraph (a), and paragraph (b) as paragraphs (a) introductory text, (a)(1), and (a)(2), respectively; and

c. Add new paragraph (b).

The revision and addition read as follows:

§ 98.33-5 Portable tanks and IBCs authorized.

* * * * *

(b) The cargoes authorized under § 98.33-3 may be transferred to and from IBCs to which this subpart applies if the IBCs meet the requirements in § 98.30-6.

§ 98.33-7 [Amended]

37. In § 98.33-7, after the words "portable tank", add the words "or IBC".

§ 98.33-9 [Amended]

38. In § 98.33-9, after the words "portable tank", add the words "or IBC".

§ 98.33-11 [Amended]

39. In § 98.33-11, in paragraphs (a) and (b), after the word "tank", add the words "or IBC".

§ 98.33-13 [Amended]

40. In § 98.33-13, after the words "portable tank", add the words "or IBC".

§ 98.33-15 [Amended]

41. Amend § 98.33-15 as follows:

a. In the introductory text, after the words "portable tank", add the words "or IBC";

b. In paragraph (a), remove the text "§ 98.30-11" and add, in its place, the text "§ 98.30-14";

c. In paragraph (b), remove the text "§ 98.30-13" and add, in its place, the text "§ 98.30-15";

d. In paragraph (c), remove the text "§ 98.30-15" and add, in its place, the text "§ 98.30-17";

e. In paragraph (d), remove the text "§ 98.30-17" and add, in its place, the text "§ 98.30-18"; and

f. In paragraph (j), remove the text "§ 98.30-14" and add, in its place, the text "§ 98.30-16".

Dated: August 27, 2013

J.G. Lantz
Director of Commercial Regulations and Standards
U.S. Coast Guard

[FR Doc. 2013-21627 Filed 09/05/2013 at 8:45 am;

Publication Date: 09/06/2013]